

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

## HOUSE ENROLLED ACT No. 1093

AN ACT to amend the Indiana Code concerning public pensions.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 2-3.5-2-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. "Salary" means:

- (1) the salary; and
- (2) the business per diem allowance and the subsistence allowance treated as compensation for federal income tax purposes;

paid to a participant by the state, determined without regard to any salary reduction agreement established under Section 125 or **Section 457** of the Internal Revenue Code.

SECTION 2. IC 2-3.5-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The defined contribution fund consists of the following:

- (1) Each participant's contributions to the fund.
- (2) Contributions made to the fund on behalf of the participants under section 5 of this chapter.
- (3) Amounts transferred to the fund under subsections (b) and (c).
- (4) All gifts, grants, devises, and bequests in money, property, or other form made to the fund.
- (5) All earnings on investments or on deposits of the funds.
- (6) All contributions or payments to the fund made in a manner provided by the general assembly.

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(b) On **any** July 1 following the date a participant begins participation in the defined contribution fund, if the participant has been before that date a member of PERF, any amount in the PERF annuity savings account credited to the participant may at the participant's irrevocable option be transferred **one (1) time** to the defined contribution fund for the benefit of the participant. At no other time, if the participant continues or begins to participate in PERF, may such a transfer be made.

(c) On **any** July 1 following the date a participant begins participation in the defined contribution fund, if the participant has been before that date a member of TRF, the amount in the TRF annuity savings account credited to the participant may at the participant's irrevocable election be transferred **one (1) time** to the defined contribution fund for the benefit of the participant. At no other time, if the participant continues or begins to participate in TRF, may the transfer be made.

(d) Each participant shall be credited individually with:

- (1) the participant's contributions to the fund under section 4 of this chapter, which shall be credited to the ~~employee contribution~~ **participant's** account;
- (2) the contributions made to the fund on behalf of the participant under section 5 of this chapter, which shall be credited to the ~~employer contribution~~ **participant's** account;
- (3) the amount transferred to the fund under subsections (b) and (c), which shall be credited to the ~~employee contribution~~ **participant's** account; and
- (4) the net earnings on ~~each of~~ the participant's accounts, determined ~~and credited annually~~ under section 3 of this chapter.

SECTION 3. IC 2-3.5-5-3, AS AMENDED BY HEA 1377-1999, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:  
Sec. 3. (a) The PERF board shall establish alternative investment programs within the fund, based on the following requirements:

- (1) The PERF board shall maintain at least one (1) alternative investment program that is an indexed stock fund and one (1) alternative investment program that is a bond fund.
- (2) The programs should represent a variety of investment objectives.
- (3) The programs may not permit a member to withdraw money from the member's account, except as provided in section 6 of this chapter.
- (4) All administrative costs of each alternative program shall be paid from the earnings on that program.

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(5) A valuation of each member's account must be completed as of the last day of each quarter.

(b) A member shall direct the allocation of the amount credited to the member among the available alternative investment funds, subject to the following conditions:

(1) A member may make a selection or change an existing selection at any time, but not more than ~~four (4) times~~ **one (1) time** in a twelve (12) month period.

(2) The PERF board shall implement the member's selection beginning the first day of the next calendar quarter that begins at least thirty (30) days after the selection is received by the PERF board. This date is the effective date of the member's selection.

(3) A member may select any combination of the available investment funds, in ten percent (10%) increments.

(4) A member's selection remains in effect until a new selection is made.

(5) On the effective date of a member's selection, the board shall reallocate the member's existing balance or balances in accordance with the member's direction, based on the market value on the effective date.

(6) If a member does not make an investment selection of the alternative investment programs, the member's account shall be invested in the bond fund.

(7) All contributions to the member's account shall be allocated as of the last day of the quarter in which the contributions are received in accordance with the member's most recent effective direction. The PERF board shall not reallocate the member's account at any other time.

(c) When a member transfers the amount credited to the member from one (1) alternative investment program to another alternative investment program, the amount credited to the member shall be valued at the market value of the member's investment, as of the day before the effective date of the member's selection. When a member retires, becomes disabled, dies, or withdraws from the fund, the amount credited to the member shall be the market value of the member's investment as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or withdrawal, plus contributions received after that date.

(d) The PERF board shall determine the value of each alternative program in the defined contribution fund, as of the last day of each calendar quarter, as follows:

(1) The market value shall exclude the employer contributions

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and employee contributions received during the quarter ending on the current allocation date.

(2) The market value as of the immediately preceding quarter end date shall include the employer contributions and employee contributions received during that preceding quarter.

(3) The market value as of the immediately preceding quarter end date shall exclude benefits paid from the fund during the quarter ending on the current quarter end date.

SECTION 4. IC 2-3.5-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) A participant who terminates service as a member of the general assembly is entitled to withdraw both the participant's employee contribution account and employer contribution account from the defined contribution fund. The withdrawal shall be made on the later of the first day of the month following termination of service or thirty (30) days after the board receives a request for withdrawal from the fund. The amount available for the withdrawal shall be the fair market value of the participant's accounts on the June 30 preceding the date of withdrawal plus employee contributions deducted since the June 30 preceding the date of withdrawal.

(b) The withdrawal amount shall be paid in a lump sum, ~~or as an actuarially equivalent~~ a monthly annuity as ~~offered~~ **purchased** by the PERF board ~~and with the withdrawal amount, or a series of monthly installment payments over sixty (60), one hundred twenty (120), or one hundred eighty (180) months,~~ as elected by the participant. The forms of annuity **and installments** shall be established by the PERF board by rule, in consultation with the system's actuary.

SECTION 5. IC 2-3.5-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) This section applies to a participant who dies while a member of the general assembly, or who dies after terminating service as a member of the general assembly and prior to withdrawing the participant's account from the defined contribution fund. The participant's employee contribution account and the participant's employer contribution account shall be paid to a beneficiary or the beneficiaries designated on a form prescribed by the board. The amount paid shall be the fair market value of the participant's accounts on the June 30 preceding the date of payment, plus employee contributions deducted since the June 30 preceding the date of payment. If there is no properly designated beneficiary, or if no beneficiary survives the participant, the participant's accounts shall be paid to:

(1) the surviving spouse of the participant;



(2) if there is no surviving spouse, a surviving dependent or the surviving dependents of the participant; or

(3) if there is no surviving spouse and no surviving dependent, the estate of the participant.

(b) Amounts payable under this section shall be paid in a lump sum, ~~or in an actuarially equivalent~~ a monthly annuity as ~~offered~~ **purchased** by the PERF board ~~and with the withdrawal amount, or a series of monthly installment payments over sixty (60) months,~~ as elected by the recipient. The forms of annuity **and installments** available shall be established by the PERF board by rule, in consultation with the system's actuary.

SECTION 6. IC 4-3-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The surviving spouse of each individual who serves as governor and who is entitled to a retirement benefit under section 1.1 of this chapter, is entitled to an annual pension. The pension shall be paid in equal monthly installments by the treasurer of state on warrant of the auditor of state after a claim has been made for the pension to the auditor by the surviving spouse or a person acting on his behalf. The annual pension under this section is equal to the **greater of following:**

(1) ~~fifty percent (50%) of~~ **For the surviving spouse of a governor who died before July 1, 1998, the greater of:**

(A) the annual retirement benefit ~~to which the governor to whom the received by the surviving spouse was married would have been entitled on the date of the governor's death under section 1.1 of this chapter; during the year beginning July 1, 1998;~~ or

~~(B)~~ **(B) ten thousand dollars (\$10,000).**

(2) **For the surviving spouse of a governor who dies after June 30, 1998, the greater of:**

(A) **fifty percent (50%) of the annual retirement benefit that the governor to whom the surviving spouse was married was receiving or was entitled to receive on the date of the governor's death; or**

**(B) ten thousand dollars (\$10,000).**

The surviving spouse of each individual who serves as governor must elect to receive either (1) or (2) above and once any payment has been received the election is irrevocable. The surviving spouse is entitled to receive the pension for the remainder of his life unless he remarries. Notwithstanding any other law to the contrary, the pension under this section is in addition to any other retirement benefits a surviving spouse is entitled to receive.



SECTION 7. IC 5-10-1.1-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1.5.** (a) The state, through the budget agency, may adopt a defined contribution plan, under Section 401(a) of the Internal Revenue Code, for the purpose of matching all or a specified portion of state employees' contributions to the state employees' deferred compensation plan.

(b) The deferred compensation committee shall be the trustee of a plan established under subsection (a) as described in section 4 of this chapter. A plan established under subsection (a) shall be administered by the auditor of state as described in section 5 of this chapter.

(c) The deferred compensation committee may approve funding offerings for a plan established under subsection (a), which may be the same as offerings for the state employees' deferred compensation plan. All funds in each plan shall be separately accounted for, but may be commingled for investment purposes.

(d) Contributions to a plan established under subsection (a) are limited to the amount of biennial appropriations made for that purpose.

(e) A plan established under subsection (a) must include appropriate provisions concerning the plan's day to day operation and any other provisions that are appropriate. Notwithstanding IC 22-2-6-2, the plan may also include provisions for the use of automated voice response units and telephonic communications, on-line activities, and other technology for participant elections, directions, and services if the technology has sufficient capacity to record and store the elections and directions.

(f) The state is obligated at any particular time only for the current market value of the funding previously made to a plan established under subsection (a).

SECTION 8. IC 5-10-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]:

**Chapter 12. Cafeteria Plan Benefits for Certain Unused Vacation, Sick, or Personal Days**

**Sec. 1.** As used in this chapter, "department" means the state personnel department.

**Sec. 2.** As used in this chapter, "state agency" means an authority, board, branch, commission, committee, department, division, or other instrumentality of state government, but does not include:



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- (1) a state educational institution (as defined in IC 20-12-0.5-1);
- (2) a state elected official's office; and
- (3) the legislative and judicial branches of state government.

**Sec. 3. (a) Subject to subsection (b), an employee who:**

- (1) has at least ten (10) years of creditable service with a state agency;
- (2) retires after June 30, 2000; and
- (3) has accrued and unused sick days, vacation days, or personal days on the employee's retirement date;

is entitled to have the amounts specified in section 5 of this chapter deposited by the state into a cafeteria plan under Section 125 of the Internal Revenue Code.

(b) The provisions of this chapter requiring the department to make deposits into a cafeteria plan on behalf of retired employees described in subsection (a) apply only if the department has received from the Internal Revenue Service any approvals or rulings that the department considers necessary or appropriate for the cafeteria plan.

**Sec. 4. (a) The department shall adopt rules under IC 4-22-2 that it considers necessary to make periodic payments to a cafeteria plan under Section 125 of the Internal Revenue Code on behalf of retired employees described in section 3 of this chapter and to otherwise carry out this chapter.**

(b) The rules adopted by the department may include provisions setting forth the following:

- (1) The minimum or maximum total amount or annual amount that may be deposited by the state under this chapter on behalf of retired employees.
- (2) The period of years of deposits.
- (3) Payment provisions.

**Sec. 5. The amount that shall be deposited on behalf of a participating retired employee may not exceed five thousand dollars (\$5,000) and is based on:**

- (1) the hourly rate the employee was paid on the employee's retirement date; and
- (2) the following provisions concerning the employee's accrued and unused vacation days, sick days, or personal days:
  - (A) An employee with at least ten (10) years of creditable service but less than fifteen (15) years of creditable service is entitled to an amount based on twenty percent (20%) of



the employee's accrued days.

(B) An employee with at least fifteen (15) years of creditable service but less than twenty (20) years of creditable service is entitled to an amount based on thirty-five percent (35%) of the employee's accrued days.

(C) An employee with at least twenty (20) years of creditable service is entitled to an amount based on not more than fifty percent (50%) of the employee's accrued days.

**Sec. 6. Within ninety (90) days after an employee's retirement date, an employee who wishes to participate in a cafeteria plan as provided under this chapter must file with the department a written application and any information required by the department.**

SECTION 9. IC 5-10.2-2-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) The annuity savings account consists of:

- (1) the members' contributions; and
- (2) the interest credits on these contributions **in the guaranteed fund or the gain or loss in market value on these contributions in the alternative investment program**, as specified in section 4 of this chapter.

Each member shall be credited individually with the amount of the member's contributions and interest credits.

(b) Each board shall maintain the annuity savings account program in effect on December 31, 1995 (referred to in this chapter as the guaranteed program). In addition, the board of the Indiana state teachers' retirement fund shall establish and maintain a guaranteed program within the 1996 account. Each board may establish investment guidelines and limits on all types of investments (including, but not limited to, stocks and bonds) and take other actions necessary to fulfill its duty as a fiduciary of the annuity savings account, subject to the limitations and restrictions set forth in IC 5-10.3-5-3 and IC 21-6.1-3-9.

(c) Each board shall establish alternative investment programs within the annuity savings account of the public employees' retirement fund, the pre-1996 account, and the 1996 account, based on the following requirements:

- (1) Each board shall maintain at least one (1) alternative investment program that is an indexed stock fund and one (1) alternative investment program that is a bond fund.
- (2) The programs should represent a variety of investment objectives under IC 5-10.3-5-3.

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(3) No program may permit a member to withdraw money from the member's account except as provided in IC 5-10.2-3 and IC 5-10.2-4.

(4) All administrative costs of each alternative program shall be paid from the earnings on that program.

(5) A valuation of each member's account must be completed at ~~least annually~~ **as of the last day of each quarter**.

(d) The board must prepare, at least annually, an analysis of the guaranteed program and each alternative investment program. This analysis must:

(1) include a description of the procedure for selecting an alternative investment program;

(2) be understandable by the majority of members; and

(3) include a description of prior investment performance.

(e) A member may direct the allocation of the amount credited to the member among the guaranteed fund and any available alternative investment funds, subject to the following conditions:

(1) A member may make a selection or change an existing selection at any time, but not more than once in a twelve (12) month period.

(2) The board shall implement the member's selection beginning the first day of the next calendar quarter that begins at least thirty (30) days after the selection is received by the board. This date is the effective date of the member's selection.

(3) A member may select any combination of the guaranteed fund or any available alternative investment funds, in ten percent (10%) increments.

(4) A member's selection remains in effect until a new selection is made.

(5) On the effective date of a member's selection, the board shall reallocate the member's existing balance or balances in accordance with the member's direction, based on: ~~the market value~~

(A) for an alternative investment program balance, **the market value** on the effective date; and ~~by account balance~~

(B) for any guaranteed program balance, **the account balance** on the effective date.

All ~~future~~ contributions to the member's account shall be allocated **as of the last day of that quarter** in accordance with the member's most recent effective direction. The board shall not reallocate the member's account at any other time.

(f) When a member who ~~has selected~~ **participates in** an alternative



investment program ~~retires, dies, suspends membership and withdraws from the fund, or~~ transfers the amount credited to the member from one (1) alternative investment program to another **alternative investment program or to the guaranteed program**, the amount credited to the member shall be valued at the market value of the member's investment, as of the ~~last day of the preceding quarter; before the effective date of the member's selection.~~ **When a member who participates in an alternative investment program retires, becomes disabled, dies, or suspends membership and withdraws from the fund, the amount credited to the member shall be the market value of the member's investment as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or suspension and withdrawal, plus contributions received after that date.**

(g) When a member who participates in the guaranteed program ~~retires, dies, suspends membership and withdraws from the fund, or~~ transfers the amount credited to the member to an alternative investment program, the amount credited to the member in the guaranteed program is computed without regard to market value and is based on the balance of the member's account in the guaranteed program as of the last day of the ~~preceding~~ quarter **preceding the effective date of the transfer.** **When a member who participates in the guaranteed program retires, becomes disabled, dies, or suspends membership and withdraws from the fund, the amount credited to the member shall be computed without regard to market value and is based on the balance of the member's account in the guaranteed program as of the last day of the quarter preceding the member's distribution or annuitization at retirement, disability, death, or suspension and withdrawal, plus any contributions received since that date plus interest since that date.**

SECTION 10. IC 5-10.2-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Interest shall be credited and compounded at least annually on all amounts credited to the member in the guaranteed program. For the guaranteed program, the board shall annually establish an interest credit rate equal to or less than the investment income earned.

(b) The market value of each alternative investment program shall be allocated at least annually to the members participating in that program.

(c) Contributions to the guaranteed program **and the alternative investment programs** shall be invested as ~~of the contributions are paid~~



~~and last day of the quarter in which the contributions are received.~~  
**Contributions to the guaranteed program** shall begin to accumulate interest at the beginning of the quarter after the quarter in which the contributions are paid. ~~Contributions to the alternative investment programs shall be invested as the contributions are paid.~~ **received.**

(d) When a member retires or withdraws with a balance in the guaranteed program, a proportional interest credit determined by the board shall be granted for the period elapsed since the last interest date on that balance.

SECTION 11. IC 5-10.2-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. Suspension of Membership. (a) A member who is not eligible for retirement or disability retirement may suspend his membership if he terminates employment.

(b) After five (5) continuous years in which he performs no service, his membership shall be automatically suspended by the board unless he is vested status.

**(c) The board may suspend a member's membership in the fund if:**

- (1) the member has not performed any service in a covered position during the past two (2) years;**
- (2) the member has not attained vested status in the fund; and**
- (3) the value of the member's annuity savings account is not more than two hundred dollars (\$200).**

~~The board may establish rules for deferring the effective date of a suspension of membership. The deferral may not be for more than six (6) months.~~

~~(b)~~ (d) On resuming service the member may claim as creditable service the period of employment before the suspension of membership, but only to the extent that the same period of employment is not being used by another governmental plan for purposes of the member's benefit in the other governmental plan.

SECTION 12. IC 5-10.2-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) After a member suspends his membership, he is entitled to withdraw in a lump sum the amount of his contributions plus interest credited to him.

(b) Except as provided in subsection (c), if the member does not claim his moneys within five (5) years after the suspension, the moneys shall be credited to the retirement fund. Any reasonable costs of locating the member or the member's beneficiary may be charged against the member's or the beneficiary's money. The fund shall retain the moneys until the member claims them, with no further interest



credits to the member after the moneys are credited to the fund.

(c) If a member suspends membership in the fund because the member is no longer in a covered position but does not separate from employment with the member's employer, money shall be credited to the retirement fund only if the member does not claim the member's money within forty-five (45) years after the suspension.

**(d) If a member is suspended under section (5)(c) of this chapter, the board shall pay the member's annuity savings account in a lump sum.**

SECTION 13. IC 5-10.2-4-1.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 1.3. (a) A member who files an application for retirement benefits must provide the following information on the application form:**

- (1) The retirement date chosen by the member.**
- (2) Whether the member chooses:**
  - (A) an annuity purchased from the amount credited to the member in the annuity savings account;**
  - (B) a total or partial distribution from the annuity savings account under section 2(b) of this chapter; or**
  - (C) a deferral of the payment of any benefits from the annuity savings account under section 2(c) of this chapter.**
- (3) The name of the beneficiary or beneficiaries designated by the member with respect to the pension portion of the member's retirement benefit.**
- (4) The name of the beneficiary or beneficiaries designated by the member with respect to the annuity portion of the member's retirement benefit, unless the member chooses total distribution under section 2 of this chapter.**

**(b) A member's designation of beneficiaries in the application for retirement benefits supersedes any previous designation of beneficiaries by the member.**

**(c) A member must indicate the name, address, date of birth, and Social Security number of each designated beneficiary and provide proof of birth of each designated beneficiary.**

**(d) Each board shall adopt a form for the application for retirement benefits that meets the requirements of this section.**

SECTION 14. IC 5-10.2-4-1.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 1.5. (a) A fund may calculate and pay an estimated retirement benefit of the pension portion to a member if:**



- (1) the member has applied for a retirement benefit and has chosen a retirement date on which the retirement benefit is to begin;
- (2) the member's membership records are incomplete or have not been certified; and
- (3) the member's membership records that have been submitted to the fund establish that the member is entitled to a retirement benefit.

(b) A fund may calculate an estimated benefit under this section based on eighty-five percent (85%) of the pension portion of the benefit determined under the fund's records on service and compensation information.

(c) If an estimated benefit is paid to a member under this section, the fund shall, after all membership records have been submitted to the fund and certified, determine the actual retirement benefit to which the member is entitled. After determining the actual retirement benefit to which the member is entitled, the fund shall temporarily adjust the actual retirement benefit that is paid to the member to reconcile any underpayment or overpayment of benefits to the member that resulted from the payment of estimated benefits. The fund may make the temporary adjustment to the member's actual retirement benefit over a reasonable time, as determined by the board.

SECTION 15. IC 5-10.2-4-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) **Unless a member elects otherwise under this section,** the retirement benefit for each member consists of the sum of a pension provided by employer contributions plus an annuity provided by the amount credited to the member in the annuity savings account. ~~However,~~

(b) A member may choose at retirement or upon a disability retirement to receive a ~~lump sum payment distribution~~ of:

- (1) the entire amount credited to the member in the annuity savings account; or
- (2) an amount equal to the member's federal income tax basis in the member's annuity savings account balance as it existed on December 31, 1986.

If the member chooses to receive the ~~lump sum payment distribution~~ under subdivision (1), the member is not entitled to an annuity as part of the retirement or disability benefit. If the member chooses to receive the ~~lump sum payment distribution~~ under subdivision (2), the member is entitled to an annuity purchasable by the amount remaining in the member's annuity savings account after the payment under subdivision

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(c) Instead of choosing to receive the benefits described in subsection (a) or (b), a member may choose upon retirement or upon disability retirement to begin receiving a pension provided by employer contributions and to defer receiving in any form the member's annuity savings account. If a member chooses this option, the member:

(1) is not entitled to an annuity as part of the member's retirement or disability benefit, and the member's annuity savings account will continue to be invested according to the member's direction under IC 5-10.2-2-3; and

(2) may later choose, as of the first day of a month, to receive a distribution of:

(A) the entire amount credited to the member in the annuity savings account; or

(B) an amount equal to the member's federal income tax basis in the member's annuity savings account balance as it existed on December 31, 1986.

If the member chooses to receive the distribution under subdivision (2)(A), the member is not entitled to an annuity as part of the member's retirement or disability benefit. If the member chooses to receive the distribution under subdivision (2)(B), the member is entitled to an annuity purchasable by the amount remaining in the member's annuity savings account after the payment under subdivision (2)(B). If the member does not choose to receive a distribution under this subsection, the member is entitled to an annuity purchasable by the entire amount in the member's annuity savings account, and the form of the annuity shall be as described in subsection (d) unless the member elects an option described in section 7(b)(1), 7(b)(2), or 7(b)(4) of this chapter. The amount to be paid under this section shall be determined in the manner described in IC 5-10.2-2-3, except that it shall be determined as of the last day of the quarter preceding the member's actual distribution or annuitization date.

(b) A member who retires is entitled to receive monthly retirement benefits, which are guaranteed for five (5) years or until the member's death, whichever is later.

(c) (d) Retirement benefits must be distributed in a manner that complies with Section 401(a)(9) of the Internal Revenue Code, as specified in IC 5-10.2-2-1.5.

SECTION 16. IC 5-10.2-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. (a) The computation

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of benefits under this section is subject to IC 5-10.2-2-1.5.

(b) For retirement benefits payable on and after July 1, 1975, for a member retired on and after January 1, 1956, the pension (p) is computed as follows:

STEP ONE: Multiply one and one-tenths percent (1.1%) times the average of the annual compensation (aac) and obtain a product.

STEP TWO: To obtain the pension, multiply the STEP ONE product by the total creditable service (scr) completed by the member on his retirement date.

Expressed mathematically:

$$p = (.011) \text{ times (aac) times (scr)}$$

(c) Unless the member has chosen a lump sum payment under section 2 of this chapter **or elects to defer receiving in any form the member's annuity savings account under section 2(c) of this chapter**, the annuity is the amount purchasable on the member's retirement date by the amount credited to the member in the annuity savings account. The amount purchasable is based on actuarial tables adopted by the board under IC 5-10.2-2-10 at an interest rate determined by the board. ~~but no greater than the average interest rate earned during the immediately preceding fiscal year ending June 30 on bonds held in the investment portfolio of the fund.~~

SECTION 17. IC 5-10.2-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) Benefits provided under this section are subject to IC 5-10.2-2-1.5.

(b) **A member who retires is entitled to receive monthly retirement benefits, which are guaranteed for five (5) years or until the member's death, whichever is later.** A member may select in writing any of the following nonconflicting options for the payment of the member's retirement benefits instead of the **five (5) year** guaranteed retirement benefit payments. ~~specified in section 2 of this chapter.~~ The amount of the optional payments shall be determined under rules of the board and shall be the actuarial equivalent of the benefit payable under sections 4, 5, and 6 of this chapter.

(1) Joint and Survivor Option.

(A) The member receives a decreased retirement benefit during the member's lifetime, and there is a benefit payable after the member's death to a designated beneficiary during the lifetime of the beneficiary, which benefit equals, at the option of the member, either the full decreased retirement benefit or two-thirds (2/3) or one-half (1/2) of that benefit.

(B) If the member dies before retirement, the designated beneficiary may receive only the amount credited to the



member in the annuity savings account unless the designated beneficiary is entitled to survivor benefits under IC 5-10.2-3.

(C) If the designated beneficiary dies before the member retires, the selection is automatically canceled **and the member may make a new beneficiary election and may elect a different form of benefit under this subsection.**

(D) If:

(i) the designated beneficiary dies while the member is receiving benefits; ~~the amount of reduced retirement benefits is not affected; or~~

(ii) **the member is receiving benefits, the member marries, either for the first time or following the death of the member's spouse, after the member's first benefit payment is made, and the member's designated beneficiary is not the member's current spouse or the member has not designated a beneficiary;**

**the member may elect to change the member's designated beneficiary or form of benefit under this subsection and to receive an actuarially adjusted and recalculated benefit for the remainder of the member's life or for the remainder of the member's life and the life of the newly designated beneficiary. If the member's new election is the joint and survivor option, the member shall indicate whether the designated beneficiary's benefit shall equal, at the option of the member, either the member's full recalculated retirement benefit or two-thirds (2/3) or one-half (1/2) of this benefit. The cost of recalculating the benefit shall be borne by the member and shall be included in the actuarial adjustment.**

(2) Benefit with No Guarantee. The member receives an increased lifetime retirement benefit without the five (5) year guarantee specified in ~~section 2 of this chapter;~~ **this subsection.**

(3) Integration with Social Security. If the member retires before the age of eligibility for Social Security benefits, in order to provide a level benefit during the member's retirement the member receives an increased retirement benefit until the age of Social Security eligibility and decreased retirement benefits after that age.

(4) Cash Refund Annuity. The member receives a lifetime annuity purchasable by the amount credited to the member in the annuity savings account, and the member's designated beneficiary receives a refund payment equal to:



(A) the total amount used in computing the annuity at the retirement date; minus

(B) the total annuity payments paid and due to the member before the member's death.

(c) A selection under subsection (b) may be made or revoked by the member on or before:

(1) the retirement date selected under section 1 of this chapter; or

(2) the date on which a retirement date is selected under section 1 of this chapter;

whichever is later.

SECTION 18. IC 5-10.2-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. (a) As used in this section, "exempt amount" means ~~twelve (12) times the monthly exempt amount;~~ **the annual earnings limit under the federal Social Security system at the member's Social Security normal retirement age for a member entitled to receive unreduced Social Security benefits,** computed for the calendar year in which a retired **public employees' retirement fund** member begins reemployment; ~~for beneficiaries aged sixty-five (65) through sixty-nine (69) in the federal social security system by the Secretary of Health and Human Services under 42 U.S.C. 403;~~ **is reemployed and computed for the fiscal year in which a retired teachers' retirement fund member is reemployed.**

(b) If a member who is receiving retirement benefits:

(1) becomes reemployed in a position covered by this article; and

(2) earns in that position more than the exempt amount;

his retirement benefit payments shall stop, and the member shall begin making contributions as required in IC 5-10.2-3-2. However, employer contributions shall be made throughout the period of reemployment.

(c) **If a member who is receiving retirement benefits is reemployed in a position covered by this article not more than ninety (90) days after the member's retirement, the member's retirement benefits shall stop, the member shall begin making contributions as required by IC 5-10.2-3-2, and employer contributions shall be made throughout the period of reemployment.**

SECTION 19. IC 5-10.3-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. (a) Securities shall be held for the fund by banks or trust companies under a custodial agreement. Income, interest, proceeds of sale, materials, redemptions, and all other receipts from securities and other investments which the board retains for the cash working balance shall be deposited with the treasurer of state.

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(b) The board may not purchase a security or financial interest issued or owned by a custodian or by a subsidiary, parent corporation, or holding company of a custodian.

(c) (b) Subject to IC 5-10.2-2-15, the board may contract with investment counsel, trust companies, or banks to assist the board in its investment program.

SECTION 20. IC 5-10.3-6-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. Collection of Payments. If the **employer or** political subdivision fails to make payments required by this chapter, the amount payable may be withheld by the auditor of state from moneys payable to the **employer or** subdivision and transferred to the fund or recovered in a suit in the circuit or superior court of the county in which the political subdivision is located, which suit shall be an action by the state on the relation of the board, prosecuted by the attorney general. **If the employer or political subdivision fails to file the reports or records required by this chapter or by IC 5-10.3-7-12.5, the auditor of state shall withhold the penalty described in IC 5-10.3-7-12.5 from money payable to the employer or the political subdivision and shall transfer the penalty to the fund.**

SECTION 21. IC 5-10.3-7-2.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2.7. (a) This section applies only to an individual who:

- (1) began service as a police officer or firefighter and became a member of a police officers' pension fund or firefighters' pension fund before 1980;
- (2) began service in another position (referred to in this section as the "PERF position") and was enrolled erroneously as a contributing member of the public employees' retirement fund with respect to the PERF position before 1980;
- (3) made contributions to the public employees' retirement fund with respect to the PERF position as if the individual had been legally enrolled in that fund;
- (4) after 1991 was denied service credit in the public employees' retirement fund with respect to all or part of the individual's service in the PERF position because of the individual's service in the police officer or firefighter position described in subdivision (1); and
- (5) claims service credit in PERF and applies for membership in PERF before January 1, 2000.

(b) Notwithstanding the provisions of section 2 of this chapter,



an individual described in subsection (a) who:

(1) is not otherwise eligible for membership in the public employees' retirement fund; and

(2) was enrolled erroneously in the public employees' retirement fund as a contributing member;

is eligible for membership in the public employees' retirement fund and is entitled to receive the benefits provided by that fund.

SECTION 22. IC 5-10.3-7-4.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.6. (a) Subject to the provisions of this section, a member may purchase service credit for the member's prior service in a position covered by the 1925 police pension fund under IC 36-8-6, the 1937 firefighters' pension fund under IC 36-8-7, or the 1953 police pension fund under IC 36-8-7.5 if the member meets the following requirements:

(1) The member has at least one (1) year of credited service in the fund.

(2) The member has not attained vested status in and is not an active member of the 1925 police pension fund, the 1937 firefighters' pension fund, or the 1953 police pension fund.

(3) Before the member retires, the member makes contributions to the fund as follows:

(A) Contributions that are equal to the product of the following:

(i) The member's salary at the time the member actually makes a contribution for the service credit.

(ii) A rate, determined by the actuary of the fund, based on the age of the member at the time the member actually makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased.

(iii) The number of years of service credit the member intends to purchase.

(B) Contributions for any accrued interest, at a rate determined by the actuary for the fund, for the period from the member's initial membership in the fund to the date payment is made by the member.

(4) The member has received verification from the fund that the service in the 1925 police pension fund, the 1937 firefighters' pension fund, or the 1953 police pension fund is, as of that date, valid.



(b) At least ten (10) years of service in Indiana is required before a member may receive a benefit based on service credits purchased under this section.

(c) A member who:

- (1) terminates employment before satisfying the eligibility requirements necessary to receive a monthly allowance; or
- (2) receives a monthly allowance for the same service from another tax supported public employee retirement plan other than under the Social Security Act;

may withdraw the purchase amount plus accumulated interest after submitting a properly completed application for a refund to the fund.

(d) The following apply to the purchase of service credit under this section:

- (1) The board may allow a member to make periodic payments of the contributions required for the purchase of the service credit. The board shall determine the length of the period during which the payments must be made.
- (2) The board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.
- (3) A member may not claim the service credit for purposes of determining eligibility or computing benefits unless the member has made all payments required for the purchase of the service credit.

SECTION 23. IC 5-10.3-7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. Leave Service. (a) A member is entitled to service credit for **adoption leave of not more than one (1) year and for** leaves of absence, granted under rules in force at the time of the leave, totaling six (6) months or less during any period of four (4) consecutive years.

(b) A member may make contributions during the leave of absence based on his rate of compensation on the date his leave of absence began.

(c) Notwithstanding any law, this section must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A member on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act, but is not entitled to receive credit for service for benefit purposes unless the leave is described in subsection (a).

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SECTION 24. IC 5-10.3-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 10. ~~Statement Concerning Employees.~~ Each department shall submit to the board certified ~~statements~~ **membership records** containing the names, titles, rates of compensation, dates of birth, length of service, and other pertinent information **required by the board** about the department's employees. **A department must submit the membership record to the board not more than thirty (30) days after the member's date of hire.**

SECTION 25. IC 5-10.3-7-12.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.5. **An employer or department must make the reports, membership records, or payments required by IC 5-10.3-6 or by sections 10 through 12 of this chapter not more than thirty (30) days after the end of the calendar quarter, if applicable, or another due date specified in sections 10 through 12 of this chapter. If the employer or department does not make the reports, records, or payments within that time:**

- (1) **the board may fine the employer or department one hundred dollars (\$100) for each additional day that the reports, records, or payments are late, to be withheld under IC 5-10.3-6-7; and**
- (2) **if the employer or department is habitually late, as determined by the board, the board shall report the employer or the department to the auditor of state for additional withholding under IC 5-10.3-6-7.**

SECTION 26. IC 21-6.1-3-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 18. Conflicts of Interest. (a) Except as otherwise provided, no trustee or employee of the board may have any direct interest in the income of any investment made by the board nor may receive any pay or emolument for services connected with any investment made by the board. **However, the board may purchase a security or financial interest issued or owned by a custodian bank or trust company or by a subsidiary, parent corporation, or holding company of a custodian bank or trust company.**

(b) No trustee or employee may become in any manner an obligor for money loaned by or borrowed from the fund.

SECTION 27. IC 21-6.1-4-4.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4.6. (a) As used in this section, "private teaching service" means service in Indiana as a teacher in a private school, **kindergarten through postsecondary**, that

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would be creditable service if performed in an accredited public school in Indiana.

(b) A member may purchase private teaching service ~~if: credit subject to the following:~~

(1) The member ~~has~~ **must have** at least ~~ten (10) years~~ **one (1) year** of ~~creditable~~ **credited** service in the fund.

(2) **The member must have at least ten (10) years of in-state credited service before the member may claim the service credit.**

~~(2) (3)~~ (3) The member ~~makes~~ **must make** contributions, before the member retires, to the fund:

(A) that are equal to the product of the following:

(i) the member's salary at the time the member actually makes a contribution for the service credit;

(ii) a percentage rate, as determined by the actuary of the fund, based on the age of the member at the time the member makes a contribution for service credit and computed to result in a contribution amount that approximates the actuarial present value of the benefit attributable to the service credit purchased; and

(iii) the number of years of private teaching service the member intends to purchase; and

(B) for any accrued interest, at a rate determined by the actuary of the fund, for the period from the member's initial membership in the fund to the date payment is made by the member; and

~~(3) (4)~~ (4) The fund ~~receives~~ **must receive** verification from the private school that the private teaching service occurred.

(c) Service for years of private teaching that qualify a member for retirement in an out-of-state system, **a private retirement system**, or ~~in~~ any federal retirement system may not be granted under this section.

(d) A member who:

(1) terminates employment before satisfying the eligibility requirements necessary to receive a monthly allowance; or

(2) receives a monthly allowance for the same service from another tax supported public employee retirement plan other than under the Social Security Act;

may withdraw the personal contributions made under the contributory plan plus accumulated interest after submitting to the fund a properly completed application for a refund.

(e) The following apply to the purchase of service credit under this section:



(1) The board may allow a member to make periodic payments of the contributions required for the purchase of the service credit. The board shall determine the length of the period during which the payments must be made.

(2) The board may deny an application for the purchase of service credit if the purchase would exceed the limitations under Section 415 of the Internal Revenue Code.

(3) A member may not claim the service credit for purposes of determining eligibility or computing benefits unless the member has made all payments required for the purchase of the service credit.

SECTION 28. IC 21-6.1-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) Except as provided in IC 21-6.1-4-6.1, a member may be given credit for leaves of absence for study, professional improvement, and temporary disability so long as the leave credit does not exceed one-seventh of the total years of service claimed for retirement, referred to as the one-seventh rule. A member granted a leave in these instances for exchange teaching and for other educational employment approved individually by the board is considered a teacher and is entitled to the benefits of the fund if for or during the leave the member pays into the fund the member's contributions. A leave for other educational employment is not subject to the one-seventh rule.

(b) In each case of a teacher requesting a leave of absence to work in a federally supported educational project, the board must determine that the project is educational in nature and serves state citizens who might otherwise be served by the public schools or public institutions of higher education. The board shall make this determination for a one (1) year period, which is later subject to review and reapproval.

(c) Subject to this chapter, leaves of absence specified in IC 20-6.1-6-1, IC 20-6.1-6-2, or IC 20-6.1-6-3 **and adoption leave of not more than one (1) year** must be credited to retirement.

(d) Notwithstanding any law, this section must be administered in a manner consistent with the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 et seq.). A member on a leave of absence that qualifies for the benefits and protections afforded by the Family and Medical Leave Act is entitled to receive credit for vesting and eligibility purposes to the extent required by the Family and Medical Leave Act, but is not entitled to receive credit for service for benefit purposes unless the leave is described in subsection (a), (b), or (c).

SECTION 29. IC 21-6.1-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) The first **pension**



benefit payment after retirement shall be made not more than ninety (90) days after the **completion and filing of the member's application for retirement date: benefits.**

(b) After ~~that the first pension benefit~~ payment, each person entitled to benefits shall receive the retirement benefits in installments payable by the tenth day of each month.

(c) The last retirement benefit payment must be prorated to terminate at the member's death.

SECTION 30. IC 33-13-9.1-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 10.5. (a) This section applies only to a person who:**

- (1) is a judge participating under this chapter;
- (2) before becoming a judge was a member of an Indiana public employees' retirement fund;
- (3) received credited service under an Indiana public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for prior service credit under section 10 of this chapter;
- (4) has not attained vested status under an Indiana public employees' retirement fund for the employment described in subdivision (2); and
- (5) has at least eight (8) years of service credit in the judges' retirement system.

(b) If a person becomes a participant in the judges' 1977 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

- (1) the prior service was credited under an Indiana public employees' retirement fund; and
- (2) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the 1977 benefit system as the total actual cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1977 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1977 benefit system the amount credited to the judge's annuity savings account and the

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present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1977 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1977 benefit system by the board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in an Indiana public employees' retirement fund is waived.

SECTION 31. IC 33-13-10.1-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 14.5. (a) This section applies only to a person who:**

- (1) is a judge participating under this chapter;
- (2) before becoming a judge was a member of an Indiana public employees' retirement fund;
- (3) received credited service under an Indiana public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for prior service credit under section 14 of this chapter;
- (4) has not attained vested status under an Indiana public employees' retirement fund for the employment described in subdivision (2); and
- (5) has at least eight (8) years of service credit in the judges' retirement system.

(b) If a person becomes a participant in the judges' 1985 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

- (1) the prior service was credited under an Indiana public employees' retirement fund; and
- (2) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the 1985 benefit system as the total cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1985 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1985 benefit system the

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amount credited to the judge's annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in an Indiana public employees' retirement fund is waived.

SECTION 32. IC 36-8-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) If a town establishes a board of metropolitan police commissioners, or if a town becomes a city, the municipality shall participate in the 1977 fund. However, if a police officer **or former marshal** is a member of the public employees' retirement fund, he may continue as a member of that fund instead of the 1977 fund. **Notwithstanding the age requirements under section 7(a) of this chapter**, a police officer **or former marshal** employed by a municipality at the time the municipality enters the 1977 fund under this section shall be a member of the 1977 fund unless the police officer **or former marshal** elects to continue as a member of the public employees' retirement fund. **A person may become a member of the 1977 fund under this subsection without meeting the age limitation under section 7(a) of this chapter only if the person satisfies:**

- (1) any aptitude, physical agility, or physical and mental standards established by a local board under IC 36-8-3.2; and
- (2) the minimum standards that are:
  - (A) adopted by the PERF board under section 19 of this chapter; and
  - (B) in effect on the date the person becomes a member of the 1977 fund.

**Credit for prior service of a person who becomes a member of the 1977 fund under this subsection shall be determined under section 18 or 18.1 of this chapter. No service credit beyond that allowed under section 18 or 18.1 of this chapter may be recognized under the 1977 fund.**

(b) If a unit did not establish a 1937 fund for its firefighters, the unit may participate in the public employees' retirement fund or it may participate in the 1977 fund. If a unit established a 1937 fund for its firefighters, the unit is and shall remain a participant in the 1977 fund.

(c) A unit that:

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- (1) has not established a pension fund for its firefighters; or
- (2) is participating in the public employees' retirement fund under subsection (b);

may participate in the 1977 fund upon approval by the fiscal body, notwithstanding IC 5-10.3-6-8. A unit that participates in the 1977 fund under this subsection must comply with section 21 of this chapter. However, if a firefighter is a member of the public employees' retirement fund, the firefighter may continue as a member of that fund instead of the 1977 fund.

SECTION 33. IC 36-8-8-12.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 12.7. (a) This section applies to hearings conducted by local boards concerning determinations of impairment under this chapter or of disability under IC 36-8-5-2(g), IC 36-8-6, IC 36-8-7, and IC 36-8-7.5.

(b) At least five (5) days before the hearing, the local board shall give notice to the fund member and the safety board of the time, date, and place of the hearing.

**(c) The local board must hold a hearing not more than ninety (90) days after the fund member requests the hearing.**

~~(c)~~ **(d)** At the hearing, the local board shall permit the fund member and the safety board to:

- (1) be represented by any individual;
- (2) through witnesses and documents, present evidence;
- (3) conduct cross-examination; and
- (4) present arguments.

~~(d)~~ **(e)** At the hearing, the local board shall require all witnesses to be examined under oath, which may be administered by a member of the local board.

~~(e)~~ **(f)** The local board shall, at the request of the fund member or the safety board, issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

~~(f)~~ **(g)** The local board shall have the hearing recorded so that a transcript may be made of the proceedings.

~~(g)~~ **(h)** After the hearing, the local board shall make its determinations, including findings of fact, in writing and shall provide copies of its determinations to the fund member and the safety board **not more than thirty (30) days after the hearing.**

**(i) If the local board:**

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**(1) does not hold a hearing within the time required under subsection (c); or**

**(2) does not issue its determination within the time required under subsection (h);**

**the fund member shall be considered to be totally impaired for purposes of section 13.5 of this chapter and, if the issue before the local board concerns the class of the member's impairment, the member shall be considered to have a Class 1 impairment.**

**(h) (j)** The local board may on its own motion issue:

- (1) subpoenas;
- (2) discovery orders; and
- (3) protective orders;

in accordance with the Indiana Rules of Trial Procedure that govern discovery, depositions, and subpoenas in civil actions.

**(i) (k)** At the hearing, the local board may exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on the basis of evidentiary privilege recognized by the courts.

**(j) (l)** At the hearing, the local board may request the testimony of witnesses and the production of documents.

**(k) (m)** If a subpoena or order is issued under this section, the party seeking the subpoena or order shall serve it in accordance with the Indiana Rules of Trial Procedure. However, if the subpoena or order is on the local board's own motion, the sheriff of the county in which the subpoena or order is to be served shall serve it. A subpoena or order under this section may be enforced in the circuit or superior court of the county in which the subpoena or order is served.

**(l) (n)** With respect to a hearing conducted for purposes of determining disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5, the determination of the local board after a hearing is final and may be appealed to the court.

**(m) (o)** With respect to a hearing conducted for purposes of determining impairment or class of impairment under this chapter, the fund member may appeal the local board's determinations. An appeal under this subsection:

- (1) must be made in writing;
- (2) must state the class of impairment and the degree of impairment that is claimed by the fund member;
- (3) must include a written determination by the chief of the police or fire department stating that there is no suitable and available work; and
- (4) must be filed with the local board and the PERF board's director no later than thirty (30) days after the date on which the



fund member received a copy of the local board's determinations.

~~(n)~~ **(p)** To the extent required by the Americans with Disabilities Act, the transcripts, records, reports, and other materials generated as a result of a hearing, review, or appeal conducted to determine an impairment under this chapter or a disability under IC 36-8-6, IC 36-8-7, or IC 36-8-7.5 must be:

- (1) retained in the separate medical file created for the member; and
- (2) treated as a confidential medical record.

SECTION 34. IC 36-8-8-13.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13.1. (a) If:

- (1) the local board has determined under this chapter that a covered impairment exists and the safety board has determined that there is no suitable and available work within the department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act; or
- (2) the fund member has filed an appeal under ~~section 12.7(m)~~ **section 12.7(o)** of this chapter;

the local board shall submit the local board's determinations and the safety board's determinations to the PERF board's director.

(b) After the PERF board's director receives the determinations, the fund member must submit to an examination by a medical authority selected by the PERF board. The authority shall determine if there is a covered impairment. With respect to a fund member who is covered by sections 12.5 and 13.5 of this chapter, the authority shall determine the degree of impairment. The PERF board shall adopt rules under IC 4-22-2 to establish impairment standards, such as the impairment standards contained in the United States Department of Veterans Affairs Schedule for Rating Disabilities. The report of the examination shall be submitted to the PERF board's director. If a fund member refuses to submit to an examination, the authority may find that no impairment exists.

(c) The PERF board's director shall review the medical authority's report and the local board's determinations and issue an initial determination within sixty (60) days after receipt of the local board's determinations. The PERF board's director shall notify the local board, the safety board, and the fund member of the initial determination. The following provisions apply if the PERF board's director does not issue an initial determination within sixty (60) days and if the delay is not attributable to the fund member or the safety board:

- (1) In the case of a review initiated under subsection (a)(1):
  - (A) the determinations of the local board and the chief of the

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police or fire department are considered to be the initial determination; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under ~~section 12.7(m)~~ **section 12.7(o)** of this chapter are considered to be the initial determination.

(d) The fund member, the safety board, or the local board may object in writing to the director's initial determination within fifteen (15) days after the determination is issued. If no written objection is filed, the initial determination becomes the final order of the PERF board. If a timely written objection is filed, the PERF board shall issue the final order after a hearing. The final order shall be issued not later than one hundred eighty (180) days after the date of receipt of the local board's determination. The following provisions apply if a final order is not issued within one hundred eighty (180) days and if the delay is not attributable to the fund member or the chief of the police or fire department:

(1) In the case of a review initiated under subsection (a)(1):

(A) the determinations of the local board and the chief of the police or fire department are considered to be the final order; and

(B) for purposes of section 13.5(d) of this chapter, the fund member is considered to be totally impaired.

(2) In the case of an appeal submitted under subsection (a)(2), the statements made by the fund member under ~~section 12.7(m)~~ **section 12.7(o)** of this chapter are considered to be the final order.

(e) If the PERF board approves the director's initial determination, then the PERF board shall issue a final order adopting the initial determination. The local board and the chief of the police or fire department shall comply with the initial determination. If the PERF board does not approve the initial determination, the PERF board may receive additional evidence on the matter before issuing a final order.

(f) Appeals of the PERF board's final order may be made under IC 4-21.5.

(g) The transcripts, records, reports, and other materials compiled under this section must be retained in accordance with the procedures specified in ~~section 12.7(n)~~ **section 12.7(p)** of this chapter.

SECTION 35. IC 36-8-8-14.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JUNE 1, 1998 (RETROACTIVE)]: Sec. 14.1. (a) Benefits paid under this section are subject to section 2.5 of

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this chapter.

(b) If a fund member dies while receiving retirement or disability benefits, the following apply:

(1) Each of the member's surviving children is entitled to a monthly benefit equal to twenty percent (20%) of the fund member's monthly benefit:

(A) until the child reaches eighteen (18) years of age; or

(B) until the child reaches twenty-three (23) years of age if the child is enrolled in and regularly attending a secondary school or is a full-time student at an accredited college or university; whichever period is longer. However, if the board finds upon the submission of satisfactory proof that a child who is at least eighteen (18) years of age is mentally or physically incapacitated, is not a ward of the state, and is not receiving a benefit under subdivision (1)(B), the child is entitled to receive an amount each month that is equal to the greater of thirty percent (30%) of the monthly pay of a first class patrolman or first class firefighter or fifty-five percent (55%) of the monthly benefit the deceased member was receiving or was entitled to receive on the date of the member's death as long as the mental or physical incapacity of the child continues. Benefits paid for a child shall be paid to the surviving parent as long as the child resides with and is supported by the surviving parent. If the surviving parent dies, the benefits shall be paid to the legal guardian of the child.

(2) The member's surviving spouse is entitled to a monthly benefit equal to sixty percent (60%) of the fund member's monthly benefit during the spouse's lifetime. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse.

If a fund member dies while receiving retirement or disability benefits, there is no surviving eligible child or spouse, and there is proof satisfactory to the local board, subject to review in the manner specified in section 13.1(b) of this chapter, that the parent was wholly dependent on the fund member, the member's surviving parent is entitled, or both surviving parents if qualified are entitled jointly, to receive fifty percent (50%) of the fund member's monthly benefit during the parent's or parents' lifetime.

(c) If a fund member dies while on active duty or while retired and not receiving benefits, the member's children and the member's spouse, or the member's parent or parents, are entitled to receive a monthly benefit determined under subsection (b). If the fund member did not

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have at least twenty (20) years of service or was not at least fifty-two (52) years old, the benefit is computed as if the member:

- (1) did have twenty (20) years of service; and
- (2) was fifty-two (52) years of age.

(d) If a fund member dies in the line of duty after August 31, 1982, the member's surviving spouse is entitled to an additional monthly benefit during the spouse's lifetime, equal to the difference between the benefit payable under subsection (b)(2) and the benefit to which the member would have been entitled on the date of the member's death, but not less than the benefit payable to a member with twenty (20) years service at fifty-two (52) years of age. If the spouse remarried before September 1, 1983, and benefits ceased on the date of remarriage, the benefits for the surviving spouse shall be reinstated on July 1, 1997, and continue during the life of the surviving spouse. For purposes of this subsection, "dies in the line of duty" means death that occurs as a direct result of personal injury or illness resulting from:

- (1) any action that the member, in the member's capacity as a police officer:

- (A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; **or**

- (B) **performs** in the course of controlling or reducing crime or enforcing the criminal law; or

- (2) any action that the member, in the member's capacity as a firefighter:

- (A) is obligated or authorized by rule, regulation, condition of employment or service, or law to perform; **or**

- (B) **performs** while on the scene of an emergency run (including false alarms) or on the way to or from the scene.

**SECTION 36. An emergency is declared for this act.**

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